

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

JAMES DELLINGER,)	
)	
<i>Petitioner,</i>)	
v.)	NO. 3:09-cv-104
)	VARLAN/SHIRLEY
)	Death Penalty
ROLAND COLSON, Warden,)	
)	
<i>Respondent.</i>)	

ORDER

This matter came before the Court on Petitioner's motion to stay this federal death penalty habeas proceeding pending exhaustion of his *Atkins* claim¹ in state court (Doc. 56). The undersigned Magistrate Judge conducted a hearing on the motion on Thursday, February 9, 2012. Amy D. Harwell and Francis L. Lloyd, Jr., counsel for Petitioner, James Dellinger, and Andrew H. Smith, counsel for Respondent, Roland Colson, participated in the motion hearing.² Having considered the motion, the record before the Court, and argument of counsel during the motion hearing, the motion to stay is **DENIED** at this time (Doc. 56).

Although the Court concludes a stay is not warranted at this time, the Court recognizes that certain events might require it to reconsider its decision. Therefore, the Parties are **ORDERED** to

¹ In *Atkins v. Virginia*, 536 U.S. 304 (2002), the Supreme Court of the United States held that the execution of a mentally retarded criminal constitutes cruel and unusual treatment in violation of the Eighth Amendment.

² Attorney DeShea Faughn, an Assistant State Attorney General sat at counsel table with Attorney Smith.

file a status report on Petitioner's state court proceedings and a status report on the *Keen* case,³ at least every sixty (60) days or whenever an event occurs. In addition, the Court requests counsel to provide the Court with a copy of their state court filings if Petitioner pursues his *Atkins* claim in state court.

SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge

³ *Keen v. State*, No. W2001-00789-SC-R11-PC, is pending in the Tennessee Supreme Court and Petitioner maintains it will determine whether he has an avenue in state court to pursue his *Atkins* claim.